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E.O. 12958: DECL: 04/29/2018
TAGS: [PGOV](#) [PINR](#) [KDEM](#) [KJUS](#) [KCOR](#) [NI](#)
SUBJECT: NIGERIAN PRESIDENTIAL ELECTION: SUPREME COURT MAY
RULE BY JULY

REF: A. ABUJA 343
[1](#)B. 07 ABUJA 841
[1](#)C. ABUJA 456
[1](#)D. 07 LAGOS 457
[1](#)E. ABUJA 779

Classified By: Pol/C Walter Pflaumer, reasons 1.4 (b & d).

[1](#)1. (C//NF) SUMMARY: On April 29, the Supreme Court convened its inaugural session in the appeals of presidential candidates Muhammadu Buhari (All Nigeria People's Party, ANPP) and Atiku Abubakar (Action Congress, AC) against President Umaru Yar'Adua (People's Democratic Party, PDP). Chief Justice Idris Kutigi suggested that the court may delay its scheduled July-September summer break in order to wrap up proceedings, and deliver a final verdict by July. Kutigi also named the six justice-panel, which will join him in hearing the appeals cases; Justice James Ogebe, who presided over the Presidential Election Tribunal which upheld President Yar'Adua's election, will not serve on the panel. While we have reported that the Chief Justice has stated privately an intention to overturn the President's election, the tentative biases or intentions of the accompanying justices of the panel remains unknown. However, recent Supreme Court rulings, including those proffered by these very justices who may annul the April 2007 presidential polls, may provide insight into these justices' approaches to the law. Two of the justices on the panel, Chief Justice Kutigi and Justice James Oguntade had both voted to uphold former President Obasanjo's 2003 elections, at the Supreme Court and tribunal respectively. While the chances of the Supreme Court ruling against Yar'Adua appear remote, the court may take public interest, national stability, and questions about the President's performance and health into account. END SUMMARY.

[1](#)2. (SBU) The Supreme Court, in its first sitting on the appeals of ANPP candidate Muhammadu Buhari and AC candidate Atiku Abubakar, addressed procedural matters, including timelines for submission of briefs, responses, and rebuttals. The court addressed procedural matters, including timelines for submission of briefs, responses, and rebuttals. While Atiku has announced he will file his appeal May 9, Buhari filed April 28. The court declared that the cases cannot be consolidated, unless both Buhari and Atiku's legal teams agree to such an arrangement. Legal counsels representing

President Yar'Adua and the Independent National Electoral Commission (INEC) signaled that they will file their responses within 8 weeks of receipt of briefs) the maximum time allotted by the Constitution. Appellants will then have 4 weeks within which to rebut, before the Supreme Court commences formal hearing. The Supreme Court is scheduled to go on summer break July - September. If both the appellants and the respondents use the maximum time allowed (e.g., 12 weeks) to remit responses and rebuttals, the court may not render a verdict before September; the Constitution grants the court up to three months to reach a decision. At the same time, the Chief Justice suggested the court may seek to delay its scheduled summer break to August, and rule in July.

¶3. (U) Supreme Court Chief Justice Idris Kutigi appointed the following six justices to sit alongside him on the panel that will hear the appeals: Aloysius Katsina-Alu, A.M. Mukhtar, Dahiru Musdapher, George Oguntade, Niki Tobi, and W.S.N. Onnoghen. (Sylvester Umaru Onu had earlier been appointed to the panel, however was later substituted due to his reportedly failing health.) Neither Justice James Ogebe, who presided over the Presidential Election Tribunal that upheld President Yar'Adua's election, nor Justice Saifullah Coomasie, who had been elevated to the Supreme Court with Ogebe March 11, will serve on the panel (Ref A). (The Supreme Court panel is required to reach, at minimum, a majority 4-3 verdict not an unanimous decision in the case.)

¶4. (C//NF) While Chief Justice Idris Kutigi (aged 69) has been heralded an "honest, impartial" arbiter, who reportedly turned down several bribe attempts (see Ref B) prior to the April 2007 elections and who stated privately an intention to overturn President Yar'Adua's election (see Ref C), the potential biases or intentions of the other justices remain

unknown. Kutigi also served on the Chief Justice Muhammad Uwais-led panel when the Supreme Court unanimously ruled to uphold former President Obasanjo's 2003 election. (This ruling had been sharply criticized for failing to recognize any electoral irregularities in the 2003 elections.) The following recent judgments by the panel's other justices, who hail from across Nigeria's six geo-political zones, provide a glimpse into these justices' experience and approaches to the law:

-- Justice Aloysius Katsina-Alu (aged 67) was elevated to the Supreme Court in 1998 and is the second-longest serving justice on the court. Katsina-Alu delivered the June 14, 2007 judgment which overturned the gubernatorial election results in Anambra state, censuring INEC for conducting elections when incumbent governor Peter Obi's term was not due to expire until March 2010. Katsina-Alu came out against the use of former President Obasanjo's powers to manipulate the electoral environment prior to the April 2007 presidential race, in two landmark decisions: (1) On March 29, 2007, Katsina-Alu struck out Obasanjo's case seeking Vice President Atiku Abubakar's indictment for de-camping to the AC; and, (2) On April 16, 2007, the Justice ruled against INEC's disqualification of Atiku as the AC presidential candidate, stating INEC did not have the power to disqualify any candidate from contesting elections.

-- Justice George Oguntade (aged 68), who voted on the Presidential Election Tribunal to uphold former President Obasanjo's 2003 election, was appointed to the Supreme Court in 2004. On January 28, 2008, Oguntade (along with two other justices) struck out Obasanjo-loyalist Andy Uba's appeal in the Anambra gubernatorial race.

-- Justice Niki Tobi (aged 68) ruled January 27, 2008 to allow former Vice President Atiku to interrogate INEC Chair Maurice Iwu over the printing and distribution of ballot papers in Nigeria declaring it a "right" of all Nigerians to "know the truth." In addition, Tobi delivered the controversial April 10, 2007 ruling which faulted the PDP for substituting Ifeanyi Ararume for Obasanjo favorite Charles Ugwu in the Imo state gubernatorial election for reasons the court said were not "cogent and verifiable." (The decision

set an important precedent, namely that the courts can intervene for aggrieved candidates during party primaries. Consequently, Ararume's name was placed on the ballot, though the PDP ultimately lost to the People's Progressive Alliance in the race.)

-- Justices Dahiru Musdapher (aged 66) and W.S.N. Onnoghen (aged 58), who were elevated to the bench in 2003 and 2005 respectively, delivered (with Justice Oguntade presiding) the controversial October 25, 2007 judgment replacing Celestine Omehia (PDP) with Rotimi Amaechi (PDP) as governor of Rivers state in the Niger Delta region. (Without calling for a fresh election, the court ordered that Omehia had not been elected the PDP's candidate during its primary. Amaechi's assumption to office through the Supreme Court has been excoriated as an imposition by judicial fiat. See Ref D.)

-- Justice A.M. Mukhtar (aged 64), who was appointed to the Supreme Court in 2005, is also the first female justice on the court. She has not presided over recent tribunal cases, but as an appellate court justice in Jos in 2004, Mukhtar upheld the deeply-flawed election of Borno governor Ali Modu Sheriff (ANPP).

15. (C) Buhari's lead counsel Mike Ahamba told PolOff April 29 that he is "fairly pleased" with the composition of the Supreme Court panel, though lambasted the counsels to the President and INEC (respondents) for "delaying" proceedings by asking for the full 8 weeks to file a response. (In an April 29 conversation with Ambassador, former Vice President Atiku echoed similar sentiments.) Ahamba informed PolOff that he will file a motion for abridgement next week, which, if granted, would effectively force the respondents to file within a month. Ahamba also noted that the Supreme Court's hearing of the appeals cases may last only a day, given that the purpose of the hearing is to clarify matters already expounded in the briefs provided by the appellants and

respondents. As with any Supreme Court case, Ahamba explained, the appellants must appeal legal points of fact delivered in the lower court's ruling, and not new evidence or argumentation, before the court. For his part, Ahamba is arguing that the Presidential Election Tribunal erred in its judgment to jettison much of the evidence (i.e., improperly marked voters registers, ballot papers, tabulation sheets, and witness affidavits) remitted to the court, and in its judgment that he failed to use "cogent" legal reasoning to prove gross electoral malfeasance.

16. (C//NF) COMMENT: The Supreme Court is the nation's final arbiter on the April 2007 presidential elections, and may rule in favor of President Yar'Adua on the basis of public interest and national stability (and, the fact that Yar'Adua will already have been in office for several months). While neither the Nigerian government nor the Nigerian polity appears prepared for a re-run election, there is always the remote possibility that the Supreme Court will rule to annul the 2007 presidential poll. While the Supreme Court has never overturned a presidential election, it has appeared more robust in its rulings over the past year. However, its recent judgments, including those by justices on the current panel (as noted above), have not all been acceded to without serious criticism. At the same time, questions about the President's performance (Ref E) coupled with uncertainty surrounding his health and his lingering political weakness are areas that could be taken into account. While a favorable verdict will confer greater legitimacy on the President, it certainly would not necessarily translate into greater political influence or, supplant or attenuate criticism that the President's first year in office (he was sworn-in on May 29, 2007) has not produced a lot of tangible results. END COMMENT.
SANDERS